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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,520	02/23/2004	Sonja Esther Berdahl	BERO-01	1514

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EXAMINER
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D ADAMO, STEPHEN D

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 04/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/784,520

Applicant(s)

BERDAHL, SONJA ESTHER

Examiner

Stephen D'Adamo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/23/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. The use of the trademark "Velcro" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 8 and 12-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims recite "...a means for gripping the adjustable strap by a human attached thereto...." The broadest reasonable interpretation of the above claimed subject matter, as a whole, encompasses a human being. Specifically, a human attached to an adjustable strap.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims continuously recite, “one or more waist *pieces*” which is confusing and unclear since the disclosure only teaches of a single waist piece 2. Similarly, claims 27 and 28 recite “one or more torso engaging means.” As understood, the waist piece can be referenced with different portions, however, the Figures show a single waist piece. Furthermore, claim 1 recites a “waist attachment means for attaching the waist piece or pieces to other parts of the harness,” which is confusing and unclear. The disclosure teaches that the waist attachment means is “for securing the harness to the chair, stroller, etc.” (page 11, lines 8-9) and not to other parts of the harness. Clarification is needed. Similar limitations exist in claims 27 and 28.

Claims 8 and 12-15 recite “...a means for gripping the adjustable strap by a human attached thereto, whereby the hand of a human can grip the gripping means....” The claimed limitation is indefinite since a human’s hand can vary in size and therefore the gripping means can vary in size according to the human’s hand. Moreover, it is indeterminate as to whether applicant’s independent claims, each individually assessed as a whole, are drawn to an apparatus per se or to the combination of an apparatus and *a harness including a human*. The conclusion is reached for the reason that the opening recitation of the preamble in applicant’s claim sets forth that the claimed invention is to “an apparatus” or *a harness*. This opening recitation is followed by a recitation that the claimed apparatus is “*for controlling the movement of a child or disabled person*”.

However, further within the claims, the applicant positively claims "*the human*" and "*the hand of a human*".

Also, it is indeterminate as to whether applicant's independent claims, each individually assessed as a whole, are drawn to an apparatus per se or to the combination of an apparatus and *a harness including a tether*. The conclusion is reached for the reason that the opening recitation of the preamble in applicant's claim sets forth that the claimed invention is to "an apparatus" or *a harness*. This opening recitation is followed by dependent claims with a recitation that the claimed apparatus is "*a tether and a harness*". Since the claims are dependent upon claim 1, which recites "a harness" in the preamble, claims 8 and 12-15 are confusing and unclear.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 8, 9, 11, 12, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Leach (5,325,818).

Leach discloses a "safety harness for infants and toddlers" comprising one or more waist pieces or torso attachment means 12 and 26 and having means 16, 18, 20 for securing the ends of the waist pieces to each other and around the waist of a child and including a waist attachment means 50 for attaching the waist piece to other parts of the harness 42. Leach teaches of 2 shoulder strap 22, 24 attached to the waist pieces, adapted to extend

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over a child's shoulders. Leach also discloses an adjustable strap having strap attachment means 48 and adapted to extend around a chair (seen in Figure 6). Furthermore, the waist piece comprises a right and left back waist portion which are adapted to extend around the waist of a child. The securing means 16, 18, 20 comprise of one or more pairs of Velcro. Moreover, the adjustable strap also includes a means for gripping comprising a loop 44 at one end thereof. In regards to claim 11, the adjustable strap is adapted to pass between the infant's legs and then attach to the waist attachment means.

Claims 1-3, 8, 9, 11, 12, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Olaiz (5,927,235).

Olaiz discloses a "kid-keeper child harness and detachable tether" comprising a waistband 48 having Velcro means 60, 60' securing the ends of the waistband to each other and around the waist of a user and including waist piece attachment means 66 for attaching the waist piece to other parts of the harness. Furthermore, Olaiz teaches of two shoulder straps 52 attached to the waist piece attachment means 66, as well as, a separate adjustable strap 20 having strap attachment means 36 attached to another waist piece attachment means 50. Moreover, Olaiz teaches of a means for gripping 24 the adjustable strap by a human.

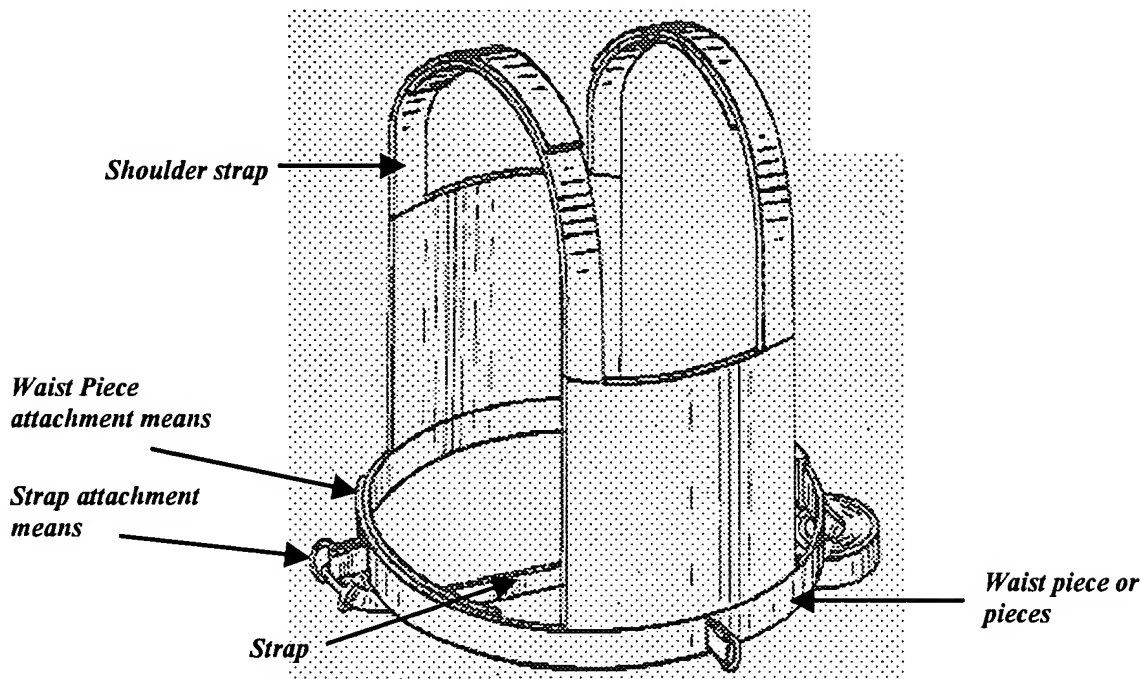
***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caulder et al. (D300,475) in view of Olaiz (5,927,235).

Caulder teaches of a "child harness" comprising one or more waist pieces including waist piece attachment means, one or more shoulder straps attached to the waist piece or pieces and a separate strap having attachment means. The waist piece attachment means comprises one or more rings or belt loops. Moreover, the strap includes a snap hook on one or more ends of the strap. Caulder's child harness is labeled below for reference. However, Caulder fails to expressly disclose an adjustable strap and securing means for the waist piece or pieces. Olaiz teaches of a "kid-keeper child harness and detachable tether" comprising a waist piece or pieces including Velcro securing means 60, 60' for attaching the waist piece or piece around a child's torso or waist. Furthermore, Olaiz teaches of an adjustable strap 20 including a slip buckle 30 and gripping means 24 in the form of a loop. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the child harness of Caulder with Velcro securing means and an adjustable strap, as taught by Olaiz, for providing a harness "fully adjustable to accommodate children of various sizes" (Abstract).



Claims 16-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caulder et al. (D300,475) in view of Olaiz (5,927,235) in further view of O'Neil (D3784,506).

Caulder teaches of a "child harness" comprising one or more waist pieces including waist piece attachment means, one or more shoulder straps attached to the waist piece or pieces and a separate strap having attachment means. The waist piece attachment means comprises one or more rings or belt loops. Moreover, the strap includes a snap hook on one or more ends of the strap. Caulder's child harness is labeled below for reference.

Olaiz further teaches of a "kid-keeper child harness and detachable tether" comprising a waist piece or pieces including Velcro securing means 60, 60' for attaching the waist piece or piece around a child's torso or waist. Olaiz also teaches of an adjustable strap 20 including a slip buckle 30 and gripping means 24 in the form of a loop. However, neither Caulder nor Olaiz expressly disclose a second strap for the user's leg. Yet, O'Neil teaches of a "child restraint" utilizing two straps, disclosed in Figures 5 and 6. It would



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have been obvious to one having ordinary skill in the art at the time the invention was made to include a second leg strap, that is shorter in length, on Caulder and Olaiz's child harness, as taught by O'Neil, for providing an additional safety feature for supporting the child's body. Moreover, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a second adjustable strap for a leg strap, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8, (CA7 1977). Note, an adjustable strap can shorten in length and includes the same features of the first adjustable strap. Moreover, O'Neil's leg strap includes snap hooks on both sides of the strap.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caulder et al. (D300,475) in view of Olaiz (5,927,235) in further view of McCarroll-Doull (1,574,672) and Engers (DE 3,532,011).

Caulder teaches of a "child harness" comprising one or more waist pieces including waist piece attachment means, one or more shoulder straps attached to the waist piece or pieces and a separate strap having attachment means. The waist piece attachment means comprises one or more rings or belt loops. Moreover, the strap includes a snap hook on one or more ends of the strap. Caulder's child harness is labeled below for reference. Olaiz further teaches of a "kid-keeper child harness and detachable tether" comprising a waist piece or pieces including Velcro securing means 60, 60' for attaching the waist piece or piece around a child's torso or waist. Olaiz also teaches of an adjustable strap 20 including a slip buckle 30 and gripping means 24 in the form of a loop. However, neither

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Caulder nor Olaiz expressly disclose shoulder straps that are V-shaped and form hollow belt loops in the waist piece. Yet, McCarroll-Doull discloses a “safety harness for children” comprising one or more waist piece or pieces including a pair of shoulder straps. The shoulder straps are attached to the front and to the rear of the waist piece or pieces in a V-shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the harness of Caulder and Olaiz with V-shaped shoulder harness, as taught by McCarroll-Doull, for placement of the shoulder strap in a more comfortable region. Since the applicant's specification does not state that the V-shape, as claimed, solves any particular problem or produces any unexpected result, whether the shoulder strap is V-shaped or straight is merely a matter of engineering design choice, and thus does not serve to patentably distinguish the claimed invention over the prior art. However, McCarroll-Doull fails to expressly disclose that the V-shape attachment to the waist piece or pieces forms two hollow loops between the two upper attachment points and the two bottom attachment points. Yet, Engers teaches of a safety belt comprising a waist piece or pieces 8 and hollow loops formed from a strap 9 attached to the waist piece or pieces at upper points and bottom points. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the means of attachment of McCarroll-Doull's shoulder harness with only upper and lower attachment points, thus forming hollow loops, as taught by Engers, for providing a passage for a belt 14.

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***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ponce De Leon, III (5,915,789), Murray (5,733,014), Greene (5,664,844), Cook (4,867,464), Smith (4,667,624), Nunn (2,212,746), O'Connor (1,310,958) and Simkin (293,799) all show various features of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen D'Adamo whose telephone number is 703-305-8173.

The examiner can normally be reached on Monday-Thursday 6:00-3:30, 2nd Friday 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pete Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SD

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March 17, 2005

  
**PETER R. BROWN**  
**PRIMARY EXAMINER**